

May 29, 1967

Governor Connally vetoed Senate Bill Number 25. The text of the message follows:

I disapprove and veto Senate Bill Number 25 on the grounds that it is patently unconstitutional in several respects.

The bill provides that the beneficiary of a trust created prior to the effective date of the Texas Trust Act(1943) may, after the death of the creator of the trust, elect to come under the provisions of the Act by giving written notice of such election to the trustee. The effect of the bill is to permit a beneficiary of a trust, by his own unilateral action, to give retroactive effect to the Texas Trust Act insofar as his beneficial interest in a trust is concerned.

The Texas Trust Act does not state whether it shall apply only to trusts created after its effective date or whether it shall also apply to such trusts created prior to such date. However, in Binford v. Snyder, 144 Texas 134, 189SW2d 471(1945), the Supreme Court held that the Act does not operate retroactively and cannot be applied to destroy a vested property right created prior to the effective date thereof. Thus, Senate Bill Number 25 would permit a beneficiary of a trust created prior to the effective date of the Texas Trust Act to give to the Act a retroactive effect which the Courts of this State have heretofore refused to give it.

More importantly, however, Section 16 of Article I of the Texas Constitution provides as follows:

"No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made."

While the Texas Courts have upheld certain retroactive laws that are only procedural or remedial(American Surety Company v. Axtell Company, 120 Texas 166, 36 SW2d 715 (1935)), they have consistently held that a retroactive statute is unconstitutional under quoted portion of the Texas Constitution if it affects vested rights, whether rights determined of contract or tort, State v. Walden, 325 SW2d 705 (error ref n.r.e., 1959); DeCordova v. Galveston, 4 Texas 470 (1849).

Consequently, if the Texas Trust Act affects vested rights, created out of a contract or otherwise, the Legislature itself would have been powerless to give the Act retroactive effect to trusts created prior to its effective date; yet Senate Bill Number 25 undertakes to give that same power-a power which would have been denied to the Legislature-to the beneficiary of a trust.

In addition to the constitutional objections to Senate Bill Number 25, there are various other problems inherent therein. For example, if a pre-Texas Trust Act trust has more than one life tenant and one elects to come under the Act while the other does not, how should their respective interests be treated particularly under

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a vested property interest situation such as that used in the above example? Likewise, if a trust is a charitable trust, how can an election to vary terms of the trust instrument be squared with the obligations of the Attorney General with regards to charitable trusts under Article 4412a of Vernon's Texas Civil Statutes. I shall not undertake to elaborate upon these objections because, in my opinion, the constitutional defects of Senate Bill Number 25 are fatal thereto and preclude my approval thereof.

Accordingly, I am hereby returning Senate Bill Number 25 to the Senate with my objections to its passage as stated above.

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